A

ALI NORUDDIN BOYING

v.

PP

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HIGH COURT SABAH & SARAWAK, KUCHING
RAVINTHRAN PARAMAGURU JC
[CRIMINAL APPEAL NO: 42-24-2009-III]
2 FEBRUARY 2010

C

CRIMINAL LAW: *Anti-Corruption Act 1997 - Section 10(a)(aa) - Corruptly receiving gratification - Appeal against conviction - Whether complainant an accomplice - Whether established how complainant could identify voice on tape recorded telephone conversations - Whether charge proven beyond reasonable doubt*

D

CRIMINAL PROCEDURE: *Charge - Form of charge - Framing or particulars of - Charges under s. 10(a)(aa) Anti-Corruption Act 1997 for soliciting financial gratification - Manner of commission of offence not stated in charges - Whether charges defective*

E

CRIMINAL PROCEDURE: *Charge - Framing of charges - Use of National Language to draft charges - Whether trial rendered null & void - Legal requirement for charge to be drawn up in English - Whether use of National Language a defect curable under s. 422 Criminal Procedure Code*

F

EVIDENCE: *Accomplice - Corruption case - Accused charged under Anti-Corruption Act 1997, s. 10(a)(aa) - Whether complainant an accomplice just because she gave bribe money - ACA alerted before commission of offence - Complainant not an accomplice*

G

EVIDENCE: *Parol evidence rule - Evidence Act 1950, s. 92 - Whether letter signed by a complainant in a corruption case stating that monies given were a loan is a contract subjected to purview of ss. 92 - Whether oral evidence of complainant that monies were actually financial gratification amounts to contradicting contents of letter under s. 92 - Whether complainant's oral evidence admissible*

H

EVIDENCE: *Witness - Credibility - Minor discrepancies in witness's evidence - Whether trial judge correct in believing witness - Whether assessment of credibility of a witness palpably flawed - Whether appellate interference required*

I

This appellant was charged with two charges under s. 10(a)(aa) of the Anti-Corruption Act 1997 for soliciting financial gratification from the complainant for processing her application for derivative pension. The complainant's late step mother was a government servant. The appellant who claimed to be an officer with the Education Department had offered to help the complainant apply for her step mother's pension. Later the appellant asked her for a sum of RM3,000 saying that it was for payment to the Pension Department. Eventually, the complainant received a cheque for about RM20,000 from the Pension Department. The appellant then asked the complainant to sign a letter stating that she owed him RM6,000. The increased amount was said to be for the Pension Department officers. The Anti-Corruption Agency (ACA) was notified and a trap was set for the appellant. As part of the trap, four conversations between the complainant and the appellant discussing the payment of money was recorded. A meeting was arranged at a restaurant. The appellant was arrested by the ACA officers when he attempted to leave the restaurant with the marked notes received from the complainant. The appellant was convicted of both charges and hence this appeal against his conviction and sentence. The grounds for appeal, *inter alia*, were: (i) that the charges were defective as they were drafted in the National Language; (ii) that the charges were defective as they did not state the manner of commission of the offence; (iii) that the evidence did not disclose any offence known to law; (iv) that the trial judge should not have admitted evidence to contradict the letter that the complainant was asked to sign; (iv) that the complainant was not asked how she could identify the voice of the appellant on the tape recorded telephone conversations; and (v) that the complainant was not a credible witness.

Held (dismissing the appeal):

(1) The use of the National Language to draft the charges did not vitiate the trial. There is no provision in Criminal Procedure Code ("CPC") that renders a trial a nullity merely because the charge had been drafted in the National Language. There was no suggestion that the appellant or his counsel who were both Malays did not understand the charge that was drafted in National Language. Even if there was a legal requirement for the charge to be drawn up in English, the error or defect occasioned by the failure to do so could be cured by s. 422 of the CPC. No failure of justice was occasioned; *Public Prosecutor v. Wahab Abdullah* (foll). (para 11)

A **(2)** The charges clearly stated that the appellant had corruptly solicited RM6,000 and had corruptly received RM3,000 for the processing of the pension benefits in question. Stating the manner of commission of the offence in the charge is not necessary to give notice to the appellant of the offence he
B allegedly committed. The charges gave sufficient notice to the appellant that he had solicited or received the money for a purpose that the law forbade. The appellant was not in any way misled by the failure of the prosecution to state in the charge that the appellant had lied to the complainant by claiming that
C the gratification was for the Pension Department officers. (para 14)

(3) The letter signed by the complainant did not prevent her from testifying that the appellant asked for RM6,000 allegedly on behalf of the Pension Department officers. The complainant's
D testimony was not to contradict, vary, add to, or subtract from the terms of the letter but was for the purpose of establishing the corrupt motive of the appellant in demanding money. Therefore, the complainant was not barred from testifying on the ground that it would contradict s. 92 of the Evidence Act
E 1950. (para 16)

(4) The complainant was acquainted with the appellant for a period of about nine months. The prosecution also adduced evidence that the telephone number of the outgoing and incoming calls belonged to the appellant. Therefore, any question as to the
F basis of her recognition of his voice should have been directed to her during cross-examination. (para 17)

(5) The complainant was not in the same category as an accomplice. She was not criminally involved in any way. There
G was no suggestion that she was not legally entitled to the pension money of her step mother. In any event, there was ample corroboration of her evidence. (para 18)

(6) Assessment of credibility of a witness is the domain of the trial court. Unless for very good reasons the assessment is
H demonstrated to be palpably flawed, the appellate court should be slow to interfere. The discrepancies in the complainant's evidence were minor and the learned Sessions Court Judge chose to believe her. In any event, the learned Sessions Court Judge did not rely on the credibility of the complainant alone
I to convict the appellant as she had regard to the corroborative evidence. (para 19)

Case(s) referred to:
Ah Mee v. PP [1967] 1 LNS 3 FC ***(refd)***
Mohamad Radhi Yaakob v. PP [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 SC ***(refd)***
PP v. Datuk Hj Harun Hj Idris (No 2) [1976] 1 LNS 97 HC ***(refd)***
PP v. Ku Yahya Ku Bahari & Anor [2000] 3 CLJ 162 HC ***(refd)***
PP v. Wahab Abdullah [1990] 1 LNS 135 HC ***(foll)***
Stirland v. Director of Public Prosecution [1944] AC 315 ***(refd)***

Legislation referred to:
Anti-Corruption Act 1997, ss. 10(a)(aa), 42
Criminal Procedure Code, ss. 154, 422
Evidence Act 1950, s. 92
Federal Constitution, arts. 161, 152
National Language Act 1963/1967, ss. 1(2), 8

For the appellant - Datu Abdul Hamid Mohd Yusoff; M/s Hamid Yusoff Advocates
For the respondent - Nik Azrin Zarin DPP

Reported by Amutha Suppayah

JUDGMENT

Ravinthran Paramaguru JC:

[1] This is an appeal by the appellant against his conviction on two charges under s. 10(a)(aa) Anti Corruption Act 1997 as follows:

> Charge 1
>
> Bahawa kamu, pada 5 Mei 2007 jam lebih kurang 6.00 petang bertempat di hadapan rumah bernombor 3107, Lorong 10a, Fasa 4, Bandar Baru Samarian, dalam daerah Kuching, dalam negeri Sarawak, telah secara rasuah meminta daripada Nur Fazilah Fauziah untuk diri kamu satu suapan, iaitu wang tunai sebanyak RM6000.00 sebagai upah untuk kamu melakukan suatu perkara iaitu, menguruskan permohonan pencen terbitan gemulah Fauziah Nawawi, yang di pohon oleh Nur Fazilah Fauziah dan dengan ini kamu telah melakukan satu kesalahan di bawah Seksyen 10(a)(aa) APR 1997 dan boleh dihukum di bawah seksyen 16 Akta yang sama (Undang-Undang Malaysia Akta 575).
>
> Charge 2
>
> Bahawa kamu, pada 11 Mei 2007 jam lebih kurang 2.30 petang bertempat di restoran KFC Satok, dalam daerah Kuching, dalam negeri Sarawak, telah secara rasuah meminta daripada Nur Fazilah Fauziah untuk diri kamu satu suapan, iaitu wang tunai sebanyak RM3000.00

A sebagai upah untuk kamu melakukan suatu perkara iaitu, menguruskan permohonan pencen terbitan gemulah Fauziah Nawawi, yang di pohon oleh Nur Fazilah Fauziah dan dengan ini kamu telah melakukan satu kesalahan di bawah Seksyen 10(a)(aa) APR 1997 dan boleh dihukum di bawah seksyen 16 Akta yang sama (Undang-Undang Malaysia Akta 575).

B

[2] The first charge is that the appellant solicited RM6,000 from one Nur Fazilah Fauziah (complainant) for processing her application for derivative pension. The second charge is that the appellant accepted RM3,000 as gratification for soliciting the said sum. The appellant claimed trial to both charges and after a full trial, the learned Sessions Court judge convicted him on both charges as follows:

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	Imprisonment	Fine	Default of fine
1st Charge:	24 months	RM30,000	6 months imprisonment
2nd Charge:	24 months	RM15,000	4 months imprisonment

D

[3] The imprisonment terms were ordered to run concurrently. Before me learned counsel for appellant has raised 22 grounds to argue that the convictions were flawed. The grounds of appeal can be summarised and grouped as follows:

E

(a) That the charge drafted in the National Language contravened the Federal Constitution, the National Language Act and constitutional agreements preceding the accession of the Borneo States into the Federation in 1968.

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(b) That the charges did not state the manner of commission of the offence and are therefore defective

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(c) That the evidence does not disclose any offence known to law.

(d) That Sessions Court judge should not have admitted evidence to contradict the letter that the complainant was asked to sign.

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(e) That the complainant was not asked how she could identify the voice of the appellant on the tape recorded telephone conversations.

(f) That the complainant is not a credible witness.

I

Summary Of The Evidence And The Findings Of The Lower Court

[4] The complainant (PW8) in this case is a young woman. She was 18 years old at the material time. Her step mother, a government servant, had passed away when she was in form 3. Her step mother had told her she would inherit her pension benefits. Sometime in August of 2006, she met the appellant at the Waterfront area in Kuching. They exchanged hand phone numbers and struck up a friendship. He told her that he is an officer with the Education Department. She told him later that she was entitled to her step mother's pension but did not how to go about applying for it. He purportedly offered to help. He accompanied her to the Pension Department to obtain the requisite application forms. He filled up the particulars column of the derivative pension application form and the complainant signed it. At the time the appellant assisted her to fill up the forms, he did not ask for any reward. However, according to the complainant after he heard that her application for derivative pension which included arrears were approved he asked for a sum of RM3,000 from her. He told her that it was payment to the Pension Department. She told one of the Pension Department officers by the name of Salamah about the request of the appellant. Salamah clarified that no payment is due for the processing of the pension benefit application. Meanwhile, by the time the warrant for the pension arrears was about to be issued, the appellant had called the Pension Department officers to inquire about the release of the payment voucher. He also insisted to the complainant that payment was due to the Pension Department. Eventually, the complainant received a cheque for about RM20,000 from the Pension Department and she deposited it into her bank account. The appellant then called her and told her he wanted to give RM3,000 to the Pension Department officers. However, when he met her on 5 May 2007, he asked her to sign a letter stating that she owed him RM6,000. When she queried why the amount had doubled, he told her that the money was meant for the Pension Department officers. This alleged demand is the subject matter of the soliciting charge.

[5] However, before the complainant could contemplate the demand of the appellant, the Anti-Corruption Agency (ACA) officers intervened. Apparently, Puan Salamah, the Pensions officer, had reported what the complainant told her to the ACA. Salamah called the complainant to her office for a meeting and she had arranged three ACA officers to interview her. The complainant then lodged a report with ACA stating that the appellant had demanded RM6,000 to be given to the Pension Department officers. The ACA

officers then set a trap for the appellant to receive part of the RM6,000 he demanded from the complainant. As part of the trap, four conversations between the complainant and the appellant discussing the payment of money was recorded. The complainant is heard on these tapes asking for reduction of the payment but the appellant refused. In the first tape, the complainant called the appellant and asked him when he wanted to collect the money. The second tape is a recorded conversation of a call that the appellant made to the hand phone of the complainant. In this tape the appellant is heard uttering in Sarawak Malay the following words:

> tauk kamek, sidaknya dah nulong bukan, bukan ya ajak tauk tak, udah pendaftaran semua ... pun ... semua apa bah, ah tauk kitak

[6] The complainant understood this to mean that the appellant was not agreeable to reduce the payment that he asked for as it was nothing compared to the assistance given by the Pension Department officers. The third tape was in respect of the fixing of the time and place where the appellant would receive the money from the complainant. The fourth tape was an incoming call from the appellant. It was also about the meeting place which was the Kentucky Fried Chicken restaurant at Satok. The trap was set and sprung according to the plan of the ACA. The complainant was given RM3,000 in marked notes. She was asked to tell the appellant that she could only withdraw a maximum of RM3,000 a day. Some ACA officers positioned themselves in the restaurant where the complainant and the appellant met. They managed to witness the complainant passing the marked notes to the appellant under the table. The appellant was promptly arrested by the ACA officers when he attempted to leave the restaurant with the marked notes.

[7] The learned Sessions Court judge found as follows. She believed the complainant that the appellant had initially solicited RM3,000 from the complainant and later increased it to RM6,000. She also believed the complainant that the appellant told her that the money was meant for the Pension Department officers for helping in the processing of the derivative pension benefit in question. She also found that there was no evidence to support the claim of the appellant in the letter that the complainant owed him RM6,000. She believed the complainant that she had borrowed only RM200 from appellant during the period they were acquainted with each other. She accepted the evidence of the Pension Department officers that the appellant had called frequently to check the status of the application of the complainant for the pension benefit of her step mother. Finally she found that the money was solicited

corruptly because no payment was due to the Pension Department or its officers and that the appellant had no reason to make this demand of the complainant. She, therefore, was satisfied that the prosecution had established a *prima facie* case on the solicitation charge.

[8] In respect of the second charge, the prosecution invoked the presumptive evidence afforded by s. 42 of the Anti Corruption Act 1997. The learned Sessions Court judge considered the evidence on the recovery of the marked notes from the appellant after his arrest. She also accepted the evidence of the ACA officers who actually witnessed the transaction in which the appellant took the money in question from the hand of the complainant. She concluded that the gratification was accepted by the appellant and therefore the presumption was successfully invoked. In respect of the element of corrupt intention, she again considered the evidence of the Pension Department officers that no payment was due to them on account of having processed the application for derivative pensions benefit. She also considered the evidence of the complainant who told the court that the appellant wanted the money to pay the Pension Department officer. Finally she considered the tape recorded conversations between the appellant and the complainant especially the second tape in which the appellant had refused to reduce the sum demanded and emphasised the effort of the Pension Department officers. For the above reasons, she found that the prosecution had established a *prima facie* case. When the defence of the appellant was called on both charges, he gave an unsworn statement. The learned Sessions Court Judge correctly directed herself that the appellant had only to raise a doubt on the prosecution's case to earn an acquittal. Although the statement was unsworn, she gave due consideration to the statement to determine whether it raises a reasonable doubt on the case for the prosecution. In view of the successful invocation of the statutory presumption by the prosecution, she cited the case of *PP v. Ku Yahya Ku Bahari & Anor* [2000] 3 CLJ 158 and stated that the evidential burden to rebut the presumption is heavier than the burden of casting a reasonable doubt but is lighter than the burden of the prosecution to prove beyond reasonable doubt (see also *Mohamad Radhi Yaakob v. PP* [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311). In the unsworn statement, the appellant did not deny asking for RM6,000 or receiving RM3,000 but he stated that the money was a loan that he had advanced to the complainant on the condition that she return the money once her application for the derivative pension of her step mother is successful. However, the Sessions Court judge

noted that during the cross-examination of the complainant, it was never put that the appellant had lent a specific sum of RM6,000 or RM3,000 to the complainant. Counsel for appellant only put to the complainant that she was in the habit of asking money from the appellant. Counsel for appellant also never put to the complainant that she was supposed to return the money once she receives the arrears of pension benefit. It was also never put to her that the appellant allegedly paid for her living expenses. All these allegations were raised for the first time in the unsworn statement of the appellant. Since these defences were never put at the earliest opportunity, the learned Sessions Court judge rejected them as an afterthought. The Sessions Court judge also noted that in respect of the incriminating second tape of the conversation between the appellant and the complainant, the appellant neither denied his voice nor the content of the conversation in the unsworn statement nor gave an innocent explanation why he uttered the words in question.

Grounds Of Appeal

Ground No. 1: Charge In The National Language

[9] Both charges in this case were drafted in the National Language. Learned counsel for appellant submitted that the provisions of the National Language Act pertaining to the use of language in the courts have not been extended to Sarawak by state law. Therefore, he submitted that the language of the courts in Sarawak is English. His authority for the above proposition is:

(1) Article 161 and 152 of the Federal Constitution.

(2) Section 1(2) National Language Act 1963/1967.

(3) Paragraph 28(d) of the Report of the Inter-Governmental Committee (commonly known as the 20 point agreement) 1962.

[10] Having read the above provisions, the position of the language of the courts in Sarawak may be summarized as follows. English was the language of the courts in Sarawak on Malaysia Day. It was provided in art. 161 that any change in respect of the language of the courts cannot be effected in Sarawak unless and until the State Legislature passes a law to adopt the provisions of the National Language Act 1963/1967 particularly s. 8 which governs the use of language in the courts. Counsel for appellant argued that reading of the charges in Bahasa Malaysia is part and parcel of court proceedings. According to his argument, the proceedings in the National Language were therefore in contravention of the law that

English is the language of the courts in Sarawak and this rendered the entire trial a nullity. He further argued that it is immaterial whether the accused and his counsel understood the National Language. This issue was never raised before the lower court. However, counsel submitted on the authority of *Stirland v. Director of Public Prosecution* [1944] AC 315 that the appellate court should allow this ground to be raised because it involved a principle of exceptional public importance. The learned DPP submitted that there was no requirement in the Criminal Procedure Code that the charge must be framed in English. He also submitted that s. 422 of the Criminal Procedure Code should be able to cure any error in the use of the National Language in framing the charge as no miscarriage of justice occurred.

[11] The constitutional provisions that counsel for appellant cited no doubt allow the courts in Sarawak to continue using English as the language of the courts since Malaysia Day until the State Legislature enacts otherwise. However, with respect to counsel for appellant, I do not think that the use of the National Language to draft the charges vitiated the trial. There is no provision in Criminal Procedure Code that renders a trial a nullity merely because the charge had been drafted in the National Language. There is no statement of law to that effect either in case-law precedents pertaining to the drawing up of charges. In fact the contrary proposition is found in the case of *PP v. Wahab Abdullah* [1990] 1 LNS 135. In that case, a drug trafficking charge was drafted in the National Language in 1984. LC Vohrah J had regard to the fact the National Language Act 1963/1967 applied in West Malaysia since 1967. However he reasoned that even if it were otherwise, the charge was valid. This is what his Lordship said:

> **In any event** the purpose of a charge is to intimate to the accused the nature of the offence alleged against him and that, in my view, can be expressed in any language that is understood by the accused. (emphasis added)

[12] I shall respectfully follow the *obiter dicta* expressed above. In the instant case, there is no suggestion that the appellant or his counsel who are both Malays did not understand the charge that was drafted in National Language. In fact, the Notice of Appeal filed on behalf of the appellant was drafted in National Language as well. Even if for some reason the appellant was not well versed in the National Language, the court interpreter would have translated the charges into Sarawak Bahasa Melayu. I also agree with the submission of the learned DPP that if there was a legal requirement

for the charge to be drawn up in English, the error or defect occasioned by the failure to do so can be cured by s. 422 of the Criminal Procedure Code which reads as follows:

> 422. Irregularities not to vitiate proceedings.
>
> Subject to the provisions contained in this Chapter no finding, sentence or order passed or made by a Court of competent jurisdiction shall be reversed or altered on account of:
>
> (a) any error, omission or irregularity in the complaint, sanction, consent, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code;
>
> (b) the want of any sanction; or
>
> (c) the improper admission or rejection of any evidence,
>
> unless such error, omission, irregularity, want, or improper admission or rejection of evidence has occasioned a failure of justice.

[13] This provision prevents any finding of a criminal court from being vitiated on account of errors, defects or irregularities as long as no failure of justice is occasioned. In the instant case, it is obvious that the appellant or his counsel may have actually benefited from the charge being in the National Language as they are all Malays. If the charges were drafted in English, there would have been a possibility of its meaning being lost in translation when rendered in National Language. I also note that there is no argument that the charges were technically defective on account of being drafted in National Language. In the premises, no failure of justice had been occasioned. I shall, therefore, hold that s. 422 of the Criminal Procedure Code would have cured any error or irregularity on account of the charges being drafted in National Language.

Ground No. 2: The Charges Did Not State The Manner Of Commission Of The Offence And Are Therefore Defective

Ground No. 3: The Evidence Does Not Disclose Any Offence Known To Law

[14] I find no merit in these grounds for the following reason. The charges clearly state that the appellant had corruptly solicited RM6,000 and had corruptly received RM3,000 for the processing of the pension benefits in question. Section 154 of the Criminal

Procedure Code provides that in the case of some offences, the charges must describe the manner of commission of the offence. Examples provided in s. 154 are cheating and obstructing public servant offences. An offence under s. 10 of the Anti Corruption Act 1997 is not listed under s. 154. In any event, stating the manner of commission of the offence in the charge is not necessary to give notice to the appellant of the offence he allegedly committed. The charges stated that the solicitation and receiving was done "corruptly". The charges would therefore have given sufficient notice to the appellant that he had solicited or received the money for a purpose that the law forbids. Counsel for appellant submitted that the appellant had no power to process the application but s. 10 provides that "any person" who solicits or receives "corruptly" gratification for himself or others commits an offence. Therefore it does not matter whether the appellant himself had the power to approve the application. The evidence led by the prosecution was that the appellant had told the complainant that the gratification was for the Pension Department officers. Counsel for appellant cross-examined the complainant on this point. Therefore, the appellant was not in any way misled by the failure of the prosecution to state in the charge that the appellant had lied to the complainant by claiming that the gratification was for the Pension Department officers.

Ground No. 4: That Sessions Court Judge should not have admitted evidence to contradict the letter that the complainant was asked to sign

[15] Counsel for appellant submitted that the learned Sessions Court judge should not have admitted evidence to contradict the letter that the complainant was asked to sign. The letter stated that she owed the appellant RM6,000. He cited s. 92 of the Evidence Act 1950 which reads as follows:

> 92. Exclusion of evidence of oral agreement.
>
> When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 91, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms:

[16] There is no doubt that this provision of the Evidence Act 1950 applies with equal force to criminal cases as well civil cases. (See *Ah Mee v. PP* [1967] 1 LNS 3). However, in this instant case,

the said letter which was signed by the complainant did not prevent her from testifying that the appellant asked for RM6,000 allegedly on behalf of the Pension Department officers. The complainant told the court that she did not even read the said letter as the appellant told her it was about payment to the Pension Department officers. She was merely told to sign it. Therefore, there was no evidence at that stage that the terms of any contract between the appellant and the complainant had been reduced into writing. Furthermore the testimony of the complainant was not "for the purpose of contradicting, varying, adding to, or subtracting from" the terms of the said letter but for the purpose of establishing the corrupt motive of the appellant in demanding money on behalf of the Pension Department officers. Therefore, in my opinion, the argument that complainant was barred from testifying on the ground that it would have contradicted s. 92 of the Evidence Act 1950 is without merit.

Ground No. 5: That The Complainant Was Not Asked How She Could Identify The Voice Of The Appellant On The Tape Recorded Telephone Conversations.

[17] I see not merit in this submission. The complainant told the court that she was acquainted with the appellant since August of 2006 which is a period of about nine months. She identified his voice and the content of the conversation at p. 151 of the notes of proceedings. The prosecution adduced evidence that the telephone number of the outgoing and incoming calls belonged to the appellant. Therefore, any question as to the basis of her recognition of his voice should have been directed to her during cross-examination.

Ground No. 6: That the complainant is not a credible witness

[18] Firstly, counsel for appellant submitted that she is a trap witness who was eager to see the appellant convicted and therefore corroborative evidence was necessary. I do not see any merit in the submission that the evidence of the complainant need to be corroborated. She cannot be placed in the same category as an accomplice. It is accepted that she had handed over the gratification to the appellant. However, the complainant is not criminally involved in any way in this case. There is no suggestion that she was not legally entitled to the pension money of her step mother. In any event, the learned Sessions Court judge found ample corroboration of her evidence. The tape recorded conversations supported her evidence that the appellant wanted to receive money for the purpose of paying off Pension Department officers. The

appellant showed up at the KFC restaurant to receive RM3,000 from the complainant. Counsel for appellant submitted that the complainant lied in the Pension Department form that she was employed at a shop when she was actually unemployed. For that reason, he suggested that she was not a credible witness. The learned Sessions Court dealt with this part of the complainant's evidence and was fully aware that she had falsely stated that she was employed. However, she still chose to believe the complainant that the appellant had corruptly solicited and received money from her. As stated in the case of *PP v. Datuk Hj Harun Hj Idris (No. 2)* [1976] 1 LNS 97:

> The question is whether the existence of certain discrepancies is sufficient to destroy their credibility. There is no rule of law that the testimony of a witness must either be believed in its entirety or not at all. A court is fully competent, for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other.

[19] Assessment of credibility of a witness is the domain of the trial court. Unless for very good reasons the assessment is demonstrated to be palpably flawed, the appellate court should be slow to interfere. In this case, the lie of the complainant appears to be trivial and of small significance. In any event, the learned Sessions Court judge did not rely on the credibility of the complainant alone to convict the appellant as she had regard to the corroborative evidence. Counsel for appellant also raised other discrepancies in the evidence of the complainant. For example the complainant said that she queried the appellant when asked to sign the purported loan letter why the amount was RM6,000 when the appellant had earlier demanded RM3,000. Counsel said that this meant that she had read the letter and had lied in court that she did not read it. Again this discrepancy is minor and the learned Sessions Court judge chose to believe her. The complainant did not say that she read the entire letter. One may just look at a document and notice figures stated in it especially since she was just asked to sign it. Counsel for appellant submitted at length that there was evidence the appellant had been supporting her since August of 2006 and therefore the loan that he may have advanced her could not be the "paltry" sum of RM200 but could have reached the sum of RM6,000. However as the learned Sessions Court judge correctly noted, the defence that all the loans given by the appellant to the complainant totalled RM6,000 was never put to her during cross-examination. Even if it was put to her, it still does not explain why the appellant cited the Pension Department's effort in processing the pension application in the second tape recorded conversation.

A

Conclusion

[20] I find that all the grounds submitted by the counsel for appellant lack merit. The learned Sessions Court judge had correctly directed herself on the law in convicting the appellant and I see no reason to disturb her finding.

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[21] In respect of the sentence, counsel for appellant submitted that a conviction under s. 10(a)(aa) where an accused person is not alleged to have acted in the capacity of a public officer is very rare. For this reason, he submitted that the learned Sessions Court judge should not have had regard to the prevalence of this type of offence. I see no misdirection on the part of the Sessions Court judge in respect of the sentencing principles she applied. When she said that she took "judicial notice of the increasing number of this type of cases in our society", she obviously referred to corruption cases generally and not to s. 10(a)(aa) offences. In this case, although the appellant is a government servant, he did not commit the offence in that capacity. Although I would tend to agree that an offence of gratification by an officer in his public capacity is more serious, the sentence imposed in this case is not manifestly excessive. The maximum term of imprisonment is 20 years. The learned Sessions Court judge imposed only two years imprisonment. She also had regard to the fact that the offences of solicitation and gratification in this case are related. Therefore she ordered the sentences to run concurrently. Thus, I see no reason to disturb the sentence imposed by the learned Sessions Court judge.

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[22] In conclusion, I dismiss the appeal against the conviction and sentence on the two charges.

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